

REPORT OF THE CHIEF COUNSEL OF THE COAST GUARD

OCTOBER 1, 1997 to SEPTEMBER 30, 1998

The table below shows the number of court-martial records received and filed at Coast Guard Headquarters during FY-98 and the five preceding years.

<u>Fiscal Year</u>	<u>98</u>	<u>97</u>	<u>96</u>	<u>95</u>	<u>94</u>	<u>93</u>
General Courts-Martial	18	6	22	11	9	14
Special Courts-Martial	21	9	16	8	23	31
Summary Courts-Martial	8	10	14	14	15	11
Total	47	25	52	33	47	56

COURTS-MARTIAL

Attorney counsel were detailed to all special courts-martial. Military judges were detailed to all special courts-martial. For most cases, the presiding judge was the Chief Trial Judge, a full-time general courts-martial judge. When the Chief Trial Judge was unavailable, military judges with other primary duties were used for special courts-martial. Control of the detail of judges was centrally exercised by the Chief Trial Judge and all requirements were met in a timely fashion.

GENERAL COURTS-MARTIAL

Nine of the 18 accused tried by general courts-martial this fiscal year were tried by military judge alone. Two of the 9 accused tried by military judge alone received a dishonorable discharge and 5 received a bad-conduct discharge. Four of the 9 accused tried by general courts-martial with members received sentences which included a punitive discharge. Nine accused elected to be tried by general courts-martial which included enlisted members and no accused elected to be tried by a court which included only officer members. All but one of the general courts-martial resulted in convictions. Five of the accused whose charges were referred to general courts-martial were nonrated (pay grades E-1 through E-3), 7 were petty officers (pay grades E-4 through E-6), 5 were chief petty officers (pay grades E-7 through E-9), and one was a junior officer (W2 through O-3).

The following is a breakdown of the sentences adjudged in general courts-martial tried by military judge alone (9 convictions):

<u>Sentence</u>	<u>Cases Imposed</u>
dishonorable discharge - - - - -	2
bad conduct discharge - - - - -	5
confinement - - - - -	9
reduction in rate - - - - -	8
fined (total \$20,000.00)- - - - -	1
forfeiture of all pay and allowances - - - - -	4

The following is a breakdown of sentences adjudged in general courts-martial tried by members (8 convictions).

Sentence	Cases Imposed
dishonorable discharge-	1
bad-conduct discharge -	3
confinement - - - - -	3
reduction in rate - - - - -	8
hard labor without confinement-	5
restriction - - - - -	5
forfeiture of all pay and allowances - - - - -	1

The following indicates the frequency of imposition of the four most common punishments imposed by general courts-martial in the past five fiscal years.

FY	Number of Convictions	Forfeitures	Confinement	Reduction in Grade	Punitive Discharge/Dismissal
98	17	5 (29%)	12 (71%)	16 (94%)	11 (65%)
97	6	2 (33%)	4 (66%)	5 (83%)	4 (66%)
96	22	15 (68%)	19 (89%)	20 (91%)	18 (82%)
95	11	6 (55%)	10 (91%)	9 (82%)	7 (64%)
94	7	1 (15%)	7 (100%)	6 (90%)	6 (90%)

The following table shows the distribution of the 440 specifications referred to general courts-martial.

Violation of the UCMJ, Article	No. of Specs.
80 (attempts) - - - - -	13
83 (fraudulent enlistment)- - - - -	1
86 (absence without leave)- - - - -	4
92 (failure to obey order or regulation) - - - - -	34
93 (cruelty and maltreatment) - - - - -	14
107 (false official statement) - - - - -	7
108 (wrongful disposition of military property)- - - - -	1
112a (wrongful use, possession, etc. of controlled substances) - - - - -	6
120 (rape or carnal knowledge) - - - - -	8
121 (larceny or wrongful appropriation) - - - - -	82
123 (forgery) - - - - -	4
123a (making, drawing or uttering check, draft, or order without sufficient funds) - - - - -	136
125 (sodomy) - - - - -	4
128 (assault)- - - - -	11
129 (burglary) - - - - -	4
134 (general) - - - - -	111

GENERAL COURTS-MARTIAL SUMMARY

Fifty per cent of the accused tried by general courts-martial were tried by military judge alone. There was a 66% increase in general courts-martial records received and filed at Coast Guard Headquarters in this fiscal year over last fiscal year. Due to the relatively small

size of the Coast Guard this change is not statistically significant when viewed as a single-year change. Over the past five years the Coast Guard has averaged approximately 14 general courts-martial per year.

SPECIAL COURTS-MARTIAL

Nineteen of the 21 accused tried by special courts-martial this fiscal year were tried by military judge alone. Four bad-conduct discharges were adjudged, all by the military judge. Two accused elected to be tried by courts consisting of officer members. No accused elected to be tried by a court consisting of enlisted members. Three of the accused whose charges were referred to special courts-martial were nonrated (pay grades E-1 through E-3), 12 were petty officers (pay grades E-4 through E-6), 5 were chief petty officers (pay grades E-7 through E-9), and one was a junior officer (W2 through O-3).

The following is a breakdown of sentences adjudged in special courts-martial tried by military judge alone (19 convictions).

Sentence	Cases Imposed
bad-conduct discharge - - - - -	4
confinement - - - - -	7
reduction in rate - - - - -	16
partial forfeiture of pay - - - - -	8
restriction - - - - -	7
confinement at hard labor - - - - -	2
hard labor without confinement - - - - -	12
fined (total \$6,000.00) - - - - -	3

The following is a breakdown of sentences adjudged in special courts-martial tried by members (two convictions).

Sentence	Cases Imposed
reduction in rate - - - - -	1
partial forfeiture of pay - - - - -	1
restriction - - - - -	1
hard labor without confinement - - - - -	1
reprimand - - - - -	1

The following shows the four sentences imposed most by special courts-martial in the past five fiscal years.

FY	Number of Convictions	Forfeitures	Confinement	Reduction in Grade	BCD
98	20	9 (45%)	9 (45%)	17 (85%)	4 (20%)
97	9	4 (44%)	6 (66%)	8 (88%)	5 (55%)
96	14	11 (79%)	10 (71%)	13 (93%)	7 (50%)
95	7	3 (43%)	5 (71%)	6 (86%)	2 (29%)
94	20	6 (30%)	17 (85%)	20 (100%)	11 (55%)

The following table shows the distribution of the 184 specifications referred to special courts-martial.

Violation of the UCMJ, Article	No. of Specs.
81 (conspiracy)- - - - -	3
83 (fraudulent enlistment) - - - - -	2
85 (desertion) - - - - -	2
86 (unauthorized absence)- - - - -	3
87 (missing movement)- - - - -	1
90 (assaulting or willfully disobeying a superior commissioned officer) - - - - -	2
92 (failure to obey order or regulation) - - - - -	34
93 (cruelty and maltreatment)- - - - -	2
107 (false official statements) - - - - -	15
108 (sale, loss, damage, destruction, or wrongful disposition of military property of the U.S.)- - - - -	3
112a (wrongful use, possession, etc., of controlled substance) - - - - -	31
116 (riot or breach of the peace) - - - - -	1
117 (provoking speech or gestures)- - - - -	1
121 (larceny or wrongful appropriation) - - - - -	26
123 (forgery) - - - - -	3
123A (insufficient funds)- - - - -	14
128 (aggravated assault)- - - - -	1
129 (burglary)- - - - -	5
133 (conduct unbecoming an officer) - - - - -	3
134 (general) - - - - -	32

SPECIAL COURTS-MARTIAL SUMMARY

Ninety per cent of the accused tried by special courts-martial were tried by military judge alone. Five per cent of these accused pled guilty to all charges and specifications. None of the accused tried by special courts-martial with members pled guilty to all charges and specifications. There was a 75% increase in special courts-martial received and filed at Coast Guard Headquarters this fiscal year over last fiscal year. Due to the relatively small size of the Coast Guard this change is not statistically significant when viewed as a single-year change. Over the past five years the Coast Guard has averaged approximately 18 special courts-martial per year.

CHIEF COUNSEL ACTION UNDER ARTICLE 69, UCMJ

In addition to the required reviews of courts-martial conducted as a result of petitions filed under Article 69, UCMJ, a discretionary review was conducted under Article 69 of all courts-martial not requiring appellate review.

PERSONNEL, ORGANIZATION, AND TRAINING

The Coast Guard has 169 officers designated as law specialists (judge advocates) serving on active duty - 129 are serving in legal billets and 40 are serving in general duty

billets. Eighteen Coast Guard officers are currently undergoing postgraduate studies in law and 18 will be certified as law specialists at the completion of their studies (6 to graduate in 1999, 2000, and 2001, respectively). Seventeen Coast Guard officers (5 postgraduates and 12 direct-commissioned officers) completed the Navy Basic Lawyer Course in Newport, Rhode Island. All have been or are in the process of being certified under Article 27(b), UCMJ. Approximately \$180,000.00 was spent on legal training during the fiscal year.

U. S. COAST GUARD COURT OF CRIMINAL APPEALS

Following the retirement of several senior law specialists, the number of judges on the Court dropped from five judges to four in January 1997 and has remained at that number with the following judges during fiscal year 1998:

Chief Judge Joseph H. Baum
Judge David J. Kantor
Judge Ronald R. Weston
Judge Lane I. McClelland

For much of the past year, the Court has frequently operated with only three judges, since many cases on the docket stemmed from the period when Judge McClelland was Chief Trial Judge. Of necessity, she was precluded from participating in decisions where she had acted in some capacity as trial judge. One case of note in which Judge McClelland did participate was a petition for extraordinary relief in the nature of a writ of habeas corpus, *Frazier v. McGowan*, which was filed with the Court on 28 May 1998. The Court issued a show cause order on 29 May 1998, received briefs from the parties and heard oral argument five days later on 3 June 1998. That same day the Court issued an order releasing the petitioner from confinement and deferring confinement until resolution of the issue raised by the petition, whether the action of the convening authority changing a bad conduct discharge to twelve months confinement was lawful. That decision, which found the convening authority's action to be lawful, but continued deferment until the decision becomes final or is rescinded, was issued on 3 August 1998, after briefs from the parties and the National Institute Of Military Justice, as *amicus curiae*, were received and oral argument heard.

In addition to the decisional work of the Court, as reflected in Appendix A, the judges of the Court have been involved in various professional conferences, committees and seminars during the past fiscal year. In March 1998, the judges of the Court participated in the William S. Fulton Jr. Appellate Military Judges Conference at the Federal Judicial Center in Washington, D.C. It was the first year for this annual conference to be held under its new name honoring retired Colonel William S. Fulton Jr. who has played such an important role in enhancing the quality of military justice during his fifty four years of military and government service, which included service as Appellate Judge on the Army Court of Military Review and Clerk of that Court and the Army Court of Criminal Appeals. This year's conference

was hosted by the Army and featured two presentations in the morning, one on Extraordinary Writs by an instructor from the Army Judge Advocate General's School and the other on military case perspectives at the Supreme Court level by retired Major General William K. Suter, Clerk of the U.S. Supreme Court, and Mr. Michael Dreeben, U.S. Deputy Solicitor General. Afternoon panel presentations on Article 66, UCMJ, fact finding powers and opinion publication included Judges Weston and McClelland of this Court as panel participants.

In May 1998, the judges of the Court attended The Judicial Conference of the United States Court of Appeals for the Armed Forces at George Washington University in Washington, D.C. This two-day conference included presentations on a variety of topics including direct and cross-examination of experts, law of sexual harassment in the workplace, post-trial proceedings, trial and appellate advocacy, and new developments in cyberspace.

The 1998 Appellate Military Judges Training Seminar was held on two days in September 1998, at the Federal Judicial Center in Washington, D.C. and was attended by Chief Judge Baum, Judge Kantor, and Judge Weston. It was the sixth year for this training seminar, created and maintained expressly for military appellate court judges by Chief Judge Frank Nebeker of the Court of Veterans Appeals. It was hosted this year by the Army and covered presentations on subjects such as the art of appellate judging; appellate opinion writing; ethics for appellate judges; and stress, collegiality and the judicial decision making process. Chief Judge Baum chaired a panel of judges discussing the scope of court of criminal appeals review under Article 66, UCMJ.

This past year Chief Judge Baum served another term as a member of the Rules Advisory Committee of the U.S. Court of Appeals for the Armed Forces working on proposed rule changes for that Court. He also continued to play an active role in the Federal Bar Association as a member of the Pentagon Chapter and as immediate past Chair of the association's Judiciary Division.

ADDITIONAL MILITARY JUSTICE STATISTICS

Appendix A contains additional basic military justice statistics for the reporting period and reflects the increase/decrease of the workload in various categories.

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